

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

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Amendment of Section 73.202(b),
Table of Allotments,
FM Broadcast Stations.
(Manistique, Michigan)

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: Chief, Allocations Branch
Policy & Rules Division (Mass Media Bureau)

**OPPOSITION TO
PETITION FOR RULE MAKING**

Comes now **Todd Stuart Noordyk** ("Noordyk"), applicant for a new FM Construction Permit on Channel 260A at Manistique, Michigan (FCC File No. BPH-970922ME), by Counsel, and hereby opposes the "Petition for Rulemaking" filed June 29, 1998 by Roy E. Henderson d/b/a Indian River Broadcasting Company ("Indian River").

Essentially Indian River seeks to settle the Manistique proceeding via rulemaking, whereby each of the three competing applicants would be awarded a Construction Permit. Indian River's petition is procedurally defective and must be denied.

Noordyk did not participate in the filing of Indian River's petition, nor did Noordyk consent to the filing of such petition. Nor has Noordyk expressed any interest in being allotted Channel 265A in place of Channel 260A. It is Commission policy not to make such allotment changes where no interest has been expressed by the competing applicant, such as Noordyk. *See, Exhibit No.*

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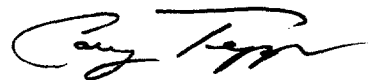
1, FCC Letter Ruling dated April 8, 1996 (regarding a similar settlement-by-rulemaking proposal submitted by Noordyk in the Negaunee, Michigan proceeding).

The Commission simply cannot force Noordyk to change channels and involuntarily participate in this settlement-by-rulemaking scenario.¹

WHEREFORE, the above premises considered, it is respectfully requested that Indian River's rulemaking petition be DENIED.

Respectfully submitted,

TODD STUART NOORDYK

By: 
Cary S. Tepper

His Attorney

Booth, Freret, Imlay & Tepper, P.C.

5101 Wisconsin Avenue, N.W.

Suite 307

Washington, D.C. 20554

(202) 686-9600

June 30, 1998

¹ Noordyk also questions the continued permissibility of settlement-by-rulemaking proposals in light of the new auction selection process.

Exhibit No. 1

(FCC Letter Ruling dated April 8, 1996)



Federal Communications Commission
Washington, D.C. 20554

APR 08 1996

Cary S. Tepper
Booth, Freret & Imlay, P.C.
1233 - 20th Street, N.W., Suite 204
Washington, D. C.

Dear Mr. Tepper:

This is in response to the petition for rule making you filed on behalf of Todd Stuart Noordyk on February 9, 1996. Therein you request the allotment of Channel 273A at Negaunee, Michigan, and amendment of the application of Goetz Communications Corporation to specify operation on Channel 273A in lieu of Channel 258A, while maintaining cut-off protection for the application. You also request the allotment of Channel 289A to Negaunee for other interests.

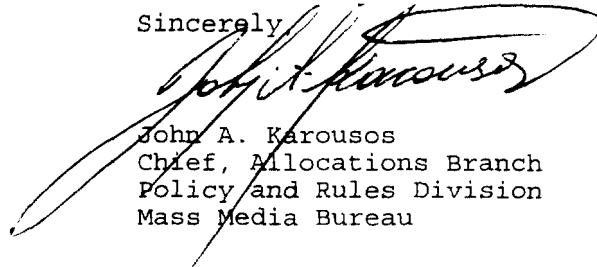
We have reviewed your proposal and find it unacceptable for rule making. You state that the allotment of the additional channels will eliminate the mutual exclusivity between two cut-off applications for a new Class A FM channel at Negaunee, Michigan, since at the present time there is no basis upon which to either designate the applications for a comparative hearing, or otherwise resolve the mutual exclusivity. However, the request is not for the amendment of Todd Stuart Noordyk's application but for the competing application filed by Goetz Communications Corporation ("Goetz"). Goetz has not participated in the filing of this petition and has expressed no interest in the allotment of Channel 273A or Channel 289A at Negaunee. Although two competing applications are on file for Channel 258A at Negaunee, we have no interest for Channel 273A or Channel 289A. It is Commission policy not to make allotments where no interest has been expressed.

On March 5, 1996, Goetz filed comments in response to your rule making proposal agreeing that the proposal conforms to the Commission's current policy of allotting additional channels to avoid a hearing but that it does not consider the economics of placing additional channels into the market. Goetz states that should the Commission determine it is in the public interest to allot additional channels to Negaunee, Goetz requests the reservation of Channel 289A for its use, as Channel 289A provides more flexibility in locating a new site than does Channel 273A.

Our engineering analysis indicates that Channel 273A can be allotted to Negaunee pursuant to Section 73.208(c)(8) of the Commission's Rules. Channel 289A at the site specified in Goetz's application, however, is short spaced to a one-step application filed by Station WCUP to substitute Channel 289C1 for Channel 289C2 at L'Anse, Michigan, on February 6, 1996 (BPH-960206IA). Applications are protected from conflicting rule making proposals on the date they are received at the Commission. See Conflicts Between Applications and Petitions for Rulemaking to Amend the FM Table of Allotments, 7 FCC Rcd 4917 (1992) and 8 FCC Rcd 4743 (1993).

In view of the above, we are returning your petition for rule making. It should be noted that you do have the option of requesting the amendment of the application of Todd Stuart Noordyk to specify operation on an alternate channel at Negaunee.

Sincerely,

A handwritten signature in black ink, appearing to read "John A. Karousos", is written over the typed name and title.

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

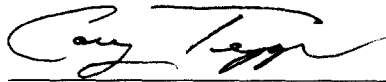
Enclosure

CERTIFICATE OF SERVICE

I, Cary S. Tepper, Esquire, hereby certify that on this 30th day of June, 1998, I have served a copy of the foregoing "**Opposition to Petition for Rule Making**" first-class, postage-prepaid, on the following:

*John A. Karousos
Chief, Allocations Branch
Federal Communications Commission
2000 M Street, N.W.; Room 554
Washington, D.C. 20554

Henry E. Crawford, Esquire
1150 Connecticut Avenue, N.W.
Suite 900
Washington, D.C. 20036-4192
(Counsel to Indian River Broadcasting Company)


Cary S. Tepper, Esq.

*/ indicates delivery by hand